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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/381,385	02/01/2000	PHILIP C. ASHMAN	BWTIUSA	3888

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EXAMINER

PATTERSON, MARC A .

ART UNIT	PAPER NUMBER
1772	

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/381,385

Applicant(s)

ASHMAN ET AL.

Examiner

Marc A Patterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,12,15-21 and 23-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,12,15-21 and 23-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The amendment filed November 26, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The phrase '5% to less than 30% by weight of a platelet filler' does not appear in the original disclosure. The original disclosure is directed to a range of 5% to 30% by weight of platelet filler, which includes 30%. The new matter is considered, however, in the new rejection below.

Applicant is required to cancel the new matter in the reply to this Office Action.

WITHDRAWN REJECTIONS

2. The 35 U.S.C. 102(b) rejection of Claims 1, 5 – 6, 12, 16 – 31 and 33 – 34 as being anticipated by Yamada et al. (U.S. Patent No. 4,842,951), of record on page 2 of the previous Action, is withdrawn.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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4. Claims 1, 5 – 6, 12, 15 – 21 and 23 – 35 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The phrase '5% to less than 30% by weight of a platelet filler' does not appear in the specification.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 5 – 6, 12, 15 – 21 and 23 – 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada et al. (U.S. Patent No. 4,842,951) in view of Branch (U.K. Patent No. 2295617).

With regard to Claims 1, 5 – 6, 12, 15 – 31 and 32 – 35, Yamada et al disclose a method for storing a flavored good (food product; column 1, lines 30 – 38) comprising providing a laminate having a non – platelet filled core barrier layer (gas permeation resistant resin layer; column 3, lines 21 – 28) sandwiched between an outer layer and at least one further layer (column 3, lines 21 – 28) the further layer being formed from a non – polar thermoplastic polyolefin resin filled with a platelet filler comprising talc (plate crystal; the polyolefin is polyethylene; column 3, lines 47 – 49, lines 57 – 61) the core barrier layer consisting essentially

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of a vapor impermeable non – polyolefin (polyvinylidene chloride; column 3, lines 29 – 44) and having a thickness less than 25 microns (column 3, lines 45 – 46), and storing a flavored good in a container formed from the laminate material such that the further layer of the non – polar thermoplastic polyolefin resin filled with talc extends between the flavored good and the core barrier layer (column 5, lines 27 – 31); the thickness of each layer is between 10 and 50 microns (column 3, lines 45 – 46; column 4, lines 44 – 46). With regard to the claimed aspect of the container reducing absorption of the flavoring, Yamada et al do not disclose absorption of the flavoring; the claimed aspect of storing the good being a method of reducing absorption of the flavoring (to zero) therefore reads on Yamada et al. Yamada et al fail to disclose a talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30.

Branch teaches the use of a talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 (page 5, second paragraph; page 6, third paragraph; Abstract) for the purpose of obtaining a container which provides a good oxygen barrier (page 3, third paragraph). The talc is high purity talc (page 5, third paragraph). The desirability of providing for a talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 in Yamada et al, which is container having oxygen barrier, would therefore be obvious to one of ordinary skill in the art.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 in Yamada et al in order to obtain a container which provides a good oxygen barrier as taught by Branch.

Yamada et al also fail to disclose a resin filled with from 5% to less than 30% by weight of a platelet filler. However, Yamada et al disclose a resin filled with 30% by weight of a platelet filler (column 4, lines 20 – 31). Therefore, the amount of platelet filler would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end use of the product. It therefore would be obvious for one of ordinary skill in the art to vary the amount of platelet filler, since the amount of platelet filler would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Yamada et al, in the absence of unexpected results. *In re Boesch and Slaney*, 205 USPQ 215 (CCPA 1980).

ANSWERS TO APPLICANT'S ARGUMENTS

7. Applicant's arguments regarding the 35 U.S.C. 102(b) rejection of Claims 1, 5 – 6, 12, 16 – 31 and 33 – 34 as being anticipated by Yamada et al. (U.S. Patent No. 4,842,951), of record on page 2 of the previous Action, have been considered and have been found to be persuasive. The rejection is therefore withdrawn. The new 35 U.S.C. 112 first paragraph rejection of Claims 1, 5 – 6, 12, 15 – 21 and 23 – 35 and 35 U.S.C. 103(a) rejection of Claims 1, 5 – 6, 12, 15 – 21 and 23 – 35 as being unpatentable over Yamada et al. (U.S. Patent No. 4,842,951) in view of Branch (U.K. Patent No. 2295617) above are directed to amended Claims 1, 5 – 6, 12, 15 – 21 and 23 – 35 and 35.

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8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (571) 272 - 1497. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (571) 272 - 1498. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

Marc Patterson
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Harold Pyon
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

3/2/04